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Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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Mr. Yamada (Japan) (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session

Paragraph 2 of article 8 of the draft Convention

1. Mr. WELBERTS (Germany), co-sponsor of the proposal contained in document A/C.6/51/NUW/WG/CRP.84/Rev.1, submitted the proposal for the consideration of the Working Group.

2. Ms. GAO Yanping (China) doubted that there was any need to include that paragraph in the article, although she was not opposed to its inclusion in principle. It seemed more logical and reasonable to her delegation to replace the word "useful" in the second line by the word "necessary".

3. Mr. SVIRIDOV (Russian Federation) said that both in the consultations and in the current meeting doubts had been raised about the wisdom of including that paragraph in the Convention, since its content coincided in part with that of paragraph 24 of article 1, which had already been adopted.

4. Mr. WELBERTS (Germany) said that article 8 covered various aspects of cooperation between joint mechanisms or commissions, while article 24 was limited to the management of international watercourses. The coincidence would depend on the mandate of the joint mechanisms or commissions, according to whether or not they had been entrusted with management functions. On the other hand, if China's proposal was the only obstacle to the adoption of the paragraph, then Germany would not oppose it.

5. Mr. SALINAS (Chile) and Mr. PRANDLER (Hungary) said that they too shared the position taken by Germany.

6. Mr. SOW (Mali) expressed satisfaction with the wording of the paragraph because of the usefulness of the mechanisms which it provided to Mali and other riparian States of major rivers. In his view, the paragraph was related to article 24. With regard to China's proposal, Mali shared the position taken by Germany.

7. Mr. CHAR (India) said that China's proposal would improve the drafting of the paragraph, which should be included in article 8.

8. Mr. KASME (Syrian Arab Republic) accepted China's proposal and considered that the paragraph should be included in article 8. On the other hand, so as not to limit the attributes of the joint commissions, he proposed the addition of the words "questions such as" before the words "relevant measures", in order to cover such questions as the settlement of disputes and the distribution or use of waters. He wondered whether the other sponsors of the proposal would be prepared to accept that addition.

9. Mr. AMARE (Ethiopia) said that the inclusion of paragraph 2 in article 8 would appear to limit the scope of cooperation to technical cooperation activities and it would be better to include the paragraph in article 24. If the paragraph had to be included in part II, it should perhaps be amended in such a way that cooperation would cover aspects related to the distribution of water.

10. The CHAIRMAN observed that paragraph 2 of article 8 in the version submitted in document CRP.84/Rev.1, with the amendment proposed by China, was acceptable to several co-sponsors. He took it that the Working Group wished to approve that version of paragraph 2 of article 8, taking note of the reservation entered by Ethiopia.

11. It was so decided.

Paragraph 10 of article 10

12. Mr. VORSTER (South Africa), coordinator of the informal consultations on the paragraph, presented a report on the paragraph. Since none of the possible formulations of the paragraph had gained general acceptance, he had concluded that the majority of members were of the view that the initial text should be retained.

13. Mr. SABEL (Israel) wished to place on record the importance which a number of delegations, in particular the Netherlands (CRP.11), India (CRP.28), the Russian Federation (CRP.34) and South Africa (CRP.40), had attached to the question of drinking water in various sessional documents. He noted that there had been no objections among the delegations to any attempt to stress the importance of that question, except that perhaps some delegations had preferred to stress other aspects.

14. The CHAIRMAN said that he took it that the Working Group wished to adopt ad referendum paragraph 2 of article 10.

15. It was so decided.

16. Mr. SVIRIDOV (Russian Federation) said that it was not clear where and how the commentary of the International Law Commission would be recorded. It was a very important issue and it did not seem appropriate for the commentary to be placed in a footnote, as was currently the case.

17. The CHAIRMAN recalled that on several occasions the formula of a mutual understanding or an agreed statement had been used in such cases and that the Chairman of the Drafting Group had already commented on the matter. The format

of such a statement and where it would be placed remained to be determined. There were other statements that would need to be addressed. In some cases, agreement had already been reached on a text, while in others agreement was yet to be reached. He requested delegations to submit the texts that were being negotiated so that a decision could be made on where and how to record them.

18. Mr. SVIRIDOV (Russian Federation) said that the best way to do so would be to follow the procedure used by the Drafting Committee, namely, to include the commentary in the report of the Working Group to the General Assembly and not in a note or a statement. Given the importance of the item and the difficulties which it had raised during the Working Group's deliberations, it would be advisable to continue the consideration of the item in informal consultations.

19. Mr. JAAFAR (Lebanon) said that his delegation supported the text, although it insisted on the addition proposed by his delegation to the representative of South Africa, who was the coordinator of the consultations on paragraph 2 of article 10.

20. The CHAIRMAN recalled that the paragraph had been adopted ad referendum on the understanding that there would be a statement whose final text had to be agreed upon and that the proposal of the delegation of Lebanon had been included in the report of the coordinator, thereby ensuring that Lebanon's position had been placed on record.

Paragraph 1 of article 10

21. The CHAIRMAN, referring to the proposal of Ethiopia to delete the words "or custom", asked whether it would be possible to place on record the Ethiopian delegation's position and adopt ad referendum the text in its current form.

22. Mr. AMARE (Ethiopia) said that several delegations were in agreement with the proposal to delete the word "custom", which would create confusion and disrupt the balance that had been achieved in article 6. His delegation had serious reservations about the use of that word, which was extremely difficult to define in the context of the article in question.

23. Mr. MANONGI (United Republic of Tanzania), later joined by the representatives of Turkey and Uganda, also expressed his reservations about the inclusion of the word "custom", since in his view there were no established customary rules in that area.

24. Mr. ROSENSTOCK (Expert Consultant) referred to the commentary of the International Law Commission on the meaning of the word in the context of paragraph 1 of article 10: "The word 'custom' applies to situations in which there may be no 'agreement' between watercourse States but where, by tradition or in practice, they have given priority to a particular use" (A/49/10, p. 257). In no way was it intended to mean customary rules.

25. Mr. SALINAS (Chile) said that the word "custom", as used in the paragraph, might be ambiguous, since if "custom" was used as an alternative to "agreement", it would be interpreted as referring to "customary rules". In order to avoid confusion, the term "practice" should be used.

26. The CHAIRMAN said that he took it that the Working Group wished to adopt ad referendum, subject to the inclusion of the reservations that had been expressed, the current text of paragraph 1 of article 10.

27. It was so decided.

28. Ms. FLORES (Mexico), reporting orally on the results of the consultations on articles 5 and 6, said that in relation to article 5, three main aspects had been considered: (1) the inclusion of the terms "sustainable" and "ecosystems" in paragraph 1; (2) the definition of the concept of optimal utilization, and (3) a proposal by the representative of Egypt to make a more specific link between articles 5 and 7. On the first question, it had been felt that the decision adopted about the inclusion of those terms in article 5 would not necessarily affect their inclusion in other parts of the text. It had been considered provisionally that the word "ecosystems" could be eliminated provided that it was retained in article 20, and that the words "and sustainable" could be retained in article 5, although five delegations had expressed reservations in that respect. On the second question, it had been decided that a declaration would be made in the records of the Working Group to define what was meant by optimal utilization, on the basis of the relevant commentary of the International Law Commission. With regard to the proposal by the representative of Egypt, it was felt that it should be set aside until the final text of article 7 was available. With regard to article 6, consideration had been given to the inclusion of new factors and the possibility of including the term "pedological" in paragraph (a). Various proposals had been made for the inclusion of new factors, although there was a trend towards not changing the text. No decision had been taken in that respect, although the delegations which had made proposals had shown flexibility and were prepared not to insist on them as long as the current text was retained. The consideration of the term "pedological" had not been concluded.

29. Mr. NUSSBAUM (Canada), reporting orally on the results of the consultations on article 7, said that from the outset, the proposal which had received the most support had been the text appearing in document A/C.6/51/NUW/WG/CRP.72. Consideration had been given to the possibility of making changes in order to gain the support of the delegations which had expressed reservations. It had become apparent that the text was a balanced compromise. However, a number of delegations felt that changes needed to be made. Some of those delegations had proposed useful amendments to address those concerns. The consultations had shown that the balance which had been achieved was precarious, since many delegations had accepted the text reluctantly. On such a delicate matter, compromise solutions were not only desirable but necessary. He urged delegations to consider the text very carefully; the text should serve as a basis for achieving consensus, since delegations had widely divergent interests. It would be useful to consider article 7 in the context of the Convention as a whole. If the different parts were considered as well as the relationship of each part to the whole, it would be possible to achieve true consensus.

30. The CHAIRMAN, referring to the report by the representative of Mexico, recalled that some delegations had agreed to delete the word "ecosystems" from paragraph 1 of the preamble as long as it was retained in article 20. When the Working Group had considered article 20, it had come out in favour of retaining

the word in that article. The representative of China, however, had suggested that the word "ecosystems" should be replaced by "ecological balance". Although many delegations were in favour of retaining the word "ecosystems", there had been broad support for the Chinese proposal. The two groups should hold intensive consultations in order to find an acceptable solution. To that end, Mr. Morshed (Bangladesh), an expert on watercourses, had been asked to help, and he would provide assistance in the consultations regarding article 20 and also article 22.

31. With regard to articles 5, 6, 7 and 33, which were closely interlinked, delegations had indicated that they could not take a final decision on any of the articles without knowing the results of the consultations on the other articles, so that they wanted to have an opportunity to consider them together. Since the four articles could not be considered at the same time, perhaps articles 5, 6 and 7 could be considered together, bearing it in mind that any decision taken would depend on the results on the consultations on article 33. In view of the limited time available, agreement must be reached on the substance of those articles. A political decision should be taken not only for the benefit of each of the countries but also for the sake of the peace and stability of watercourse systems. To that end, he called for the cooperation and contribution of all members of the Working Group in achieving a viable convention which would be acceptable to the majority of watercourse States. Informal consultations could therefore be held in order to reach agreement on the substance of articles 5, 6 and 7 and the coordinators could continue their coordinating work.

32. Mr. BOCALANDRO (Argentina) asked for informal consultations to be held so that progress could be made.

33. Mr. SALINAS (Chile), supported by Mr. CAFLISCH (Observer for Switzerland) and Ms. FAHMI (Egypt), said that informal consultations must be held, coordinated by the coordinators of articles 5, 6 and 7.

34. Mr. ROSENSTOCK (Expert Consultant) said that the articles had to be considered one by one, and noted that what was accepted would always be provisional and would be approved later ad referendum. On the basis of the majority opinion expressed in the consultations which had been held, there was general agreement about accepting the version of article 5 drafted by the International Law Commission, adding the word "sustainable" and deleting the word "ecosystems". That acceptance would be provisional in nature, depending on what was done with the other articles. With regard to article 6, most delegations were in favour of leaving it in its current form, deleting the word "pedological". If those versions of articles 5 and 6 could be regarded as working hypotheses, the Working Group could proceed to consider the results of the consultations conducted by the coordinator on article 7. If consensus could be reached about that article, considerable progress would have been made.

35. Mr. HARRIS (United States of America), reporting orally on the consultations conducted on article 3, said that, with regard to paragraph 2 of that article, there were three possible options as to the manner of treating the question of harmonizing existing watercourse agreements with the basic principles of the Convention. The first was to include the word "should", the

second was that there should be no article on the question, and the third was that there should be an article, but that it should include the word "may". The views of 52 delegations had been sought, and 20 of them had been in favour of the third option. To the question of whether they would join in a consensus on that option, 50 delegations had responded in the affirmative. Consequently, the paragraph should be drafted with the word "may", and would consist of the draft to be presented as a result of the consultations, which would also include a slight technical change in the drafting.

36. With regard to article 3, paragraph 4, there were two variants appearing in brackets, the first, "[provided that the agreement does not adversely affect]" and the second, "[except insofar as the agreement adversely affects]". Of the 52 delegations consulted, most had been in favour of the second variant. Consequently, a draft of the paragraph including that variant would be submitted.

37. With regard to paragraph 6, it was suggested that a small drafting change should be made which had the support of both the delegation which had first suggested its inclusion and the delegation which had expressed concern about it. Since the change would not affect the meaning of the paragraph, it would be presented in that form in the report.

38. Mr. GONZÁLEZ (France) said that in the French text of article 3, paragraph 4, the second phrase in brackets should read as follows: "dans la mesure où cet accord ne porte pas atteinte".

The meeting rose at 11.55 a.m.